

# HOUSE BILL REPORT

## EHB 1087

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### As Passed Legislature

**Title:** An act relating to improving the effectiveness of the office of minority and women's business enterprises.

**Brief Description:** Improving the effectiveness of the office of minority and women's business enterprises.

**Sponsors:** Representatives Kenney, Pettigrew, Hasegawa, Darneille, Chase, Nelson, Sullivan, Dickerson, Hudgins, White and Upthegrove.

#### **Brief History:**

##### **Committee Activity:**

Community & Economic Development & Trade: 1/19/09, 1/28/09 [DP].

##### **Floor Activity:**

Passed House: 2/20/09, 86-8.

Senate Amended.

Passed Senate: 4/13/09, 40-6.

House Concurred.

Passed House: 4/18/09, 85-12.

Passed Legislature.

#### **Brief Summary of Engrossed Bill**

- Requires the Office of Financial Management (OFM) to develop, in consultation with the Office of Minority and Women's Business Enterprises, a strategic plan to improve the effectiveness of assistance to small minority and women's businesses in competing for state contracts.
- Requires state agencies and institutions of higher education to report data to the OFM for the purpose of reporting progress on the participation of minority and women's businesses in state contracts.

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### HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE

**Majority Report:** Do pass. Signed by 8 members: Representatives Kenney, Chair; Maxwell, Vice Chair; Smith, Ranking Minority Member; Chase, Liias, Orcutt, Parker and Probst.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Chris Cordes (786-7103)

**Background:**

The Office of Minority and Women's Business Enterprises (OMWBE) was created in 1983 with the statutory purpose of providing minority and women-owned business enterprises (MWBE) the maximum practicable opportunity for increased participation in public works contracts and public contracts for goods and services. Among other things, the OMWBE is required to:

- develop and implement programs and a comprehensive plan to provide an opportunity for qualified MWBE to participate in public works and in supplying goods and services to state agencies and educational institutions;
- identify barriers to equal participation by qualified MWBE in state agency and educational contracts;
- establish annual overall goals for MWBE participation for each state agency and educational institution;
- develop and maintain a central MWBE certification list for state agencies and educational institutions; and
- submit an annual report to the Governor and the Legislature outlining the progress in implementing the program.

The OMWBE is the sole authority for certifying minority, women-owned, and socially and economically disadvantaged businesses for participation in public contracting programs. Only small business concerns, as defined by the OMWBE, may be certified.

Annual goals for participation in state contracts by qualified MWBE are established under an administrative rule. The rule uses a percentage of the reporting base, which includes all expenditure for public works, personal services, and the procurement of goods and services by state agencies and educational institutions.

The Director of the OMWBE may establish ad hoc advisory committees as necessary to assist in the development of policies.

Initiative 200 (I-200), adopted by the voters in 1998, prohibits discrimination or preferential treatment in public contracting on the basis of race, sex, color, ethnicity, or nationality. After I-200's passage, Governor Locke issued a directive on the implementation of programs, such as the OMWBE program, in light of I-200. Governor Locke directed that, in accordance with I-200, state agencies could not consider race, sex, color, ethnicity, or national origin in awarding contracts. Nor could agencies add preferences for meeting MWBE goals or award a contract to a bidder who did not submit the lowest bid but who met MWBE goals. He further directed the OMWBE to continue establishing laudatory, voluntary goals for state agencies and educational institutions to help eliminate improper discrimination by identifying disparities in participation by MWBE in state contracts. He directed these agencies and institutions to intensify their outreach and recruitment efforts to increase the number of available contractors within under represented groups.

In 2006 Governor Gregoire asked state agencies to work with the OMWBE to implement a Supplier Diversity Program. In her letter to the state agency directors, she noted that state

contracts with certified MWBE had declined over the previous six years. For minority businesses, the decline was from 5 percent to less than 1 percent and, for women-owned businesses, from 4 percent to 1 percent. She asked the agencies to designate agency leaders, track progress, and implement practical solutions.

### **Summary of Engrossed Bill:**

#### The Minority and Women's Business Strategic Plan.

The Office of Financial Management (OFM), in consultation with the Office of Minority and Women's Business Enterprises (OMWBE) and any advisory committee, must develop a strategic plan to improve the effectiveness of state agencies in assisting small minority and women's business enterprises (MWBE) in competing for and receiving state contracts. The plan must be updated annually, with timelines and strategies to:

- facilitate communication with and among MWBE on contracting with the state;
- increase the effectiveness of outreach to MWBE;
- streamline the statewide certification process;
- focus technical assistance to small businesses and certified firms;
- provide an effective training program for state agencies on the certification process and ways to increase the role of MWBE in state contracting;
- address barriers to inclusion of certified firms in the state procurement process, and increase selection of certified firms as prime contractors and subcontractors; and
- develop accountability measures to use in reporting progress.

The OFM must make a preliminary report on the plan and an assessment of progress by September 1, 2009, to the Governor and the Legislature, with annual reports beginning December 1, 2009.

#### Agency Data Reporting.

For the purpose of reporting progress, state agencies and educational institutions must submit, at least annually, data to the OFM and the OMWBE on the participation by qualified MWBE in their contracts. The Director of the OMWBE (Director) will determine the content, format, and reporting schedule for the data reports. The OFM must submit the aggregated data to the Governor and the Legislature.

The OFM must maintain a list of persons at state agencies and educational institutions who are able to present at legislative committee hearings on the progress in assisting MWBE.

#### OMWBE Advisory Committees.

The duties of any advisory committees established by the Director are expanded to include providing the Director with policy advice on current issues. The committees may meet as often as necessary, and the membership must be as diverse and representative as possible of certified MWBE, unless such a requirement would reduce the number of members with relevant knowledge and experience. The membership should include organizations that represent such businesses and should reflect statewide geographic distribution of small

businesses. The membership may also include nonvoting representatives of state and local government.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Certification of small minority and women's businesses has been an important tool for economic development since 1983. It has been a successful program, but it is important to overcome the concerns that I-200 raised about the program. Small businesses should be able to participate in state contracts on an equal footing. It will help to have a focused plan that can help make streamlined certification a reality and determine how to provide necessary technical assistance to small businesses and how to encourage their participation. There should be improved accountability to know how the program is working. The Advisory Committee should be reflective of small businesses statewide.

(With concerns) The OMWBE already has a plan in place. The current statute's authorization for ad hoc advisory committees is working. The old Advisory Committee was abolished some years ago because it was too formal and structured. It was hard to interest all the members in issues unrelated to their own businesses. Ad hoc advisory groups meet the need to address specific industry concerns. The program needs to be restructured to emphasize existing tools not being used now. The number of minority and women's businesses participating in state contracts will take care of itself if state agencies would use available tools.

(Information only) The OMWBE does not have authority to hold state agencies accountable. The data that state agencies provide to the OMWBE are often corrupted and require considerable work to make useful.

**Persons Testifying:** (In support) Representative Kenney, prime sponsor.

(With concerns) Jim Medina.

(Information only) Cynthia Cooper, Office of Minority and Women's Business Enterprises.

**Persons Signed In To Testify But Not Testifying:** None.